

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN THE MATTER OF:

CASE NUMBER:

Roy Randolph Carpenter, Jr.
Penny Averette Carpenter
20078 Sanders Road
Stem, NC 27851

09-03678-8-JRL

Debtors.

Chapter 13

RESPONSE TO OBJECTION TO CLAIM

NOW COMES FRANKLIN SIS CORPORATION (hereinafter "Franklin"), through counsel, responding to the Debtors' objection filed herein to its claim, and shows unto the court the following:

1. Franklin is a North Carolina corporation and is the owner of certain real property located at 2008 Sanders Road, Stem, NC 27581 (hereinafter "the property") and more particularly described as follows:

A certain lot or parcel of land lying and being situate in Tally Ho Township, Granville County, N.C., on south side of S.R. #1132, containing 3.2928 acres, more or less, and being designated as Lot # 5 on map of the Lots of Franklin SIS Corp., made by James R. Wilson, R.L.S., July 25, 1996, recorded in Map Book 19, page 55, Granville County Registry.

2. Franklin obtained title to the property by General Warranty Deed from the Debtors on May 20, 2003, which deed was filed of record on October 7, 2009, in book 1329 page 400, Granville County Registry, a copy of which is attached hereto as Exhibit A.

3. Prior to this transaction, Franklin conveyed the property to the Debtors by General Warranty Deed dated April 17, 1997, of record in Book 714 Page 656, Granville County Registry, a copy of which is attached to the Debtors objection to claim. This conveyance was secured by a promissory note and deed of trust, copies of which are attached hereto as Exhibits B and C.

4. The Debtors filed two separate petitions for bankruptcy protection in the Middle District of North Carolina in files numbered 98-81365 and 99-81030. The Debtors were discharged in the second proceeding on February 3, 2000.

5. The Debtors were unable to make the payments as originally set out in the purchase agreement and other documents, and Franklin accepted the General Warranty Deed in May of 2003 and allowed the Debtors to continue to live in the property under a new purchase agreement, a copy of which is attached hereto as Exhibit D.

6. The Debtors continued to experience financial difficulties, and Franklin would lend the Debtors money at various times and revise the purchase contract each time to reflect the sum of money lent.

7. The claim filed in this matter is the latest iteration of the purchase agreement between the parties.

8. The contract referenced above and filed as the claim herein has been breached by the Debtors in that they have failed to make payments as scheduled, the last full payment having been made over one year ago, with no payment at all since February, 2009.

WHEREFORE, Franklin prays the Court as follows:

1. To set this matter for hearing as soon as practicable.
2. To enter an Order requiring the Trustee to either assume or reject the contract pursuant to 11 USC § 365 and enter an Order providing Franklin with payment or other adequate protection for the arrears in the contract payments.
3. In the alternative, to enter an Order accepting Franklin as a fully secured creditor in the amount set forth in its claim, to the extent of the value of the collateral, and require immediate payments to be made, along with some form of adequate protection payments to cover the arrears. That the Court further order that Franklin be allowed to modify its claim herein to reflect this change.
4. In the alternative, to enter an Order granting Franklin relief from the automatic stay to allow it to pursue its remedies under North Carolina law.
5. That the Debtors be required to pay Franklin's counsel fees.
6. For such other and further relief as this Court deems just and proper.

Dated: December 21, 2009.

ROYSTER, CROSS & HENSLEY, LLP
Post Office Drawer 1168
135 College Street
Oxford, North Carolina 27565
Telephone: (919) 693-3131
Facsimile: (919) 693-8014
Attorneys for Franklin SIS

By: s/Dale W. Hensley
Dale W. Hensley
N.C. State Bar #25556

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the RESPONSE TO OBJECTION TO CLAIM in the above entitled action upon all other parties to this cause by either electronic service or by depositing a copy thereof, postage paid, in the United States Mail, addressed to the following parties or attorneys for said parties:

John T. Orcutt
Attorney
6616-203 Six Forks Rd.
Raleigh, NC 27615

John F. Logan
Chapter 13 Trustee
P.O. Box 61039
Raleigh, NC 27661-1039

I hereby certify under penalty of perjury the foregoing is true and correct.

This the 21st day of December, 2009.

ROYSTER, CROSS & HENSLEY, LLP
Post Office Drawer 1168
135 College Street
Oxford, North Carolina 27565
Telephone: (919) 693-3131
Facsimile: (919) 693-4018
Attorneys for Franklin SIS

By: s/Dale W. Hensley
Dale W. Hensley
N.C. State Bar #25556